

AFFIRMED DATE: July 23, 2004
Docket No. R2004-08

**OPINION, FINDINGS AND DECISION
ON THE OPERATION OF COMPETITION
AMONG MOTOR VEHICLE INSURERS**

July 23, 2004

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On May 21, 2004, the Division of Insurance (“Division”) issued a notice of public hearing, pursuant to the requirements of G.L. c. 175E, §5, to consider whether the fix-and-establish rate setting procedure followed to set private passenger automobile insurance rates for 2004 should be renewed to set such rates for 2005. The statute requires the Commissioner of Insurance (“Commissioner”) to determine annually, with respect to any territory or to any kind, subdivision or class of motor vehicle insurance, whether competition is either i) insufficient to assure that rates will not be excessive; or ii) so conducted as to be destructive of competition or detrimental to the solvency of insurers. If the Commissioner finds that either condition exists, she must fix and establish the rates for such insurance or territory pursuant to G.L. c. 175, §113B. The hearing took place on June 22, 2004 at the Division’s office in Boston.

Representatives of the Office of the Attorney General (“AG”) and of the State Rating Bureau (“SRB”) made oral presentations at the hearing. Other speakers included Peter Robertson, Esq., on behalf of the Property Casualty Insurers Association of America; Donald Baldini, Esq., for the Liberty Mutual Insurance Company; and James Harrington, Esq., for the Massachusetts Insurance Federation. In addition, Leonard Fisher, Esq., and H. Thomas Colo, president of an auto body repair shop, spoke. Francis A. Mancini, Esq., president of the Massachusetts Association of Insurance Agents (“MAIA”) submitted a written statement. The hearing record was left open until June 30 to receive any additional written comment. One such submission was received.

The AG, the SRB, and the representatives of trade organizations, whose members include property and casualty insurance companies writing private passenger automobile insurance in Massachusetts, uniformly support moving to a competitive marketplace in Massachusetts. At the same time, their statements demonstrated consensus on the timing of a move to full competition; all agreed that it should be done gradually and that the Commissioner should continue to fix-and-establish rates for 2005.

Speakers noted that in recent months two initiatives have been undertaken to address changes to the current automobile insurance system: 1) submission to the Commissioner, by Commonwealth Automobile Reinsurers (“CAR”), of proposed changes to its Rules of Operation that will reform the residual market system; and 2) appointment of the Governor’s Task Force on Automobile Insurance Reform (“Task

Force”), which is charged with the task of examining the entire private passenger automobile insurance market. In addition, a proposal has been made to change the Safe Driver Insurance Plan (“SDIP”) over the next two years. Several speakers noted that addressing problems with the residual market has been identified in the past as a necessary precondition to a competitive market, and found encouraging the progress that has been made to date on those issues. Further, they noted, elements such as rate subsidies that are now incorporated into the fix-and-establish system, suggestions and options that have been offered in the past for moving toward competitive rating, and proposals based on the regulatory experience of other jurisdictions will be brought to the attention of the new Task Force.

In light of the ongoing status of these initiatives, the speakers concluded that it is not desirable to deregulate private passenger automobile insurance rates at this time. According to the AG, reform of the market will require legislative action and, until such action is taken, regulation should continue. He notes that the current market is highly concentrated and insufficiently competitive. The SRB, the AG and Liberty Mutual all observed that an abrupt shift to competition without a reform system in place could result in disruptive price increases, particularly for inexperienced and urban drivers, similar to that which occurred in 1977. MAIA noted that retaining the fix-and-establish system for 2005 will allow all those involved in the system to concentrate on a smooth transition to a new residual market structure and changes in the SDIP.

The widespread view that competition in the market for private passenger automobile insurance system could not be achieved without significant reforms to the residual market was discussed at some length in the *2003 Decision on Competition in 2004*. The *2002 Decision on Competition in 2003* expressed hope that a task force could develop proposals to restructure or replace the current system for developing statewide insurance rates, or to increase competition within the current system. The Commissioner observed that consensus on reform proposals is appropriately reached through analysis and discussion in a setting in which the industry as a whole, consumers, regulatory and other government agencies, individual insurers, insurance producers, and other interested persons may be heard, and may participate in developing recommendations and considering implementation strategies. The proposals to change the residual market

system and the formation of the Task Force are welcome responses to concerns expressed in past years.

No one recommends going to a fully competitive system in 2005 and, on consideration of the written submissions and the statements made at the hearings, I conclude that a move to full competitive rating in 2005 is not desirable. Neither consumers nor insurers will benefit if full competitive rating is instituted without thoughtful planning and carefully structured implementation. Furthermore, moving to competition at this time could disrupt reasoned consideration of recent proposals to reform the residual market and the SDIP, and preempt effective deliberation by the new Task Force.

Based on the record of this proceeding, I find that present conditions are such that competition, if implemented in 2005, would be insufficient to assure that rates will not be excessive, and might be so conducted as to be destructive of competition. Therefore, with respect to the private passenger class, the procedures set forth in G.L. c. 175, §113B, whereby the Commissioner fixes and establishes rates, and insurers may apply to deviate from those rates, will continue to be used for all coverages for calendar year 2005.

This decision has been filed this 23rd day of July 2004 in the office of the Commissioner of Insurance and with the Secretary of State as a public document. Any party aggrieved by this decision may, within twenty days, file a petition for review in the Supreme Judicial Court for Suffolk County.

/s/

Jean F. Farrington
Presiding Officer

Affirmed:

/s/

Julianne M. Bowler
Commissioner of Insurance

